

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

INA STEINER, DAVID STEINER, and
STEINER ASSOCIATES, LLC,

Plaintiffs

v.

EBAY, INC., et al.,

Defendants

Civil Action No. 21-CV-11181-PBS

**DEFENDANT DAVID HARVILLE’S OPPOSITION TO PLAINTIFFS’ MOTIONS TO
PARTIALLY RELIEVE DEFENDANTS BAUGH AND HARVILLE FROM THE
PROTECTIVE ORDER IN CRIMINAL CASE**

Defendant David Harville (hereinafter, “Harville”), through his undersigned counsel, respectfully opposes *Plaintiffs’ Motion To Partially Relieve Defendants Baugh And Harville From The Criminal Protective Order Relating To Documents Produced By eBay Pursuant To Rule 17(C) Subpoena* (Document No. 284); and *Plaintiffs’ Motion To Partially Relieve Defendants Baugh And Harville From The Criminal Protective Order Relating To Documents Produced By eBay Through The Government* (Document No. 285) (collective referred to herein as the “Motions for Relief”).

Harville was a named defendant in criminal case entitled United States of America v. Jim Baugh and David Harville, Case No. 1:20-cr-10263-PBS (hereinafter referred to as the “Criminal Case”). On December 10, 2020, the Government filed *Assented-To Motion For Protective Order* (Criminal Case, Document No. 42). On December 16, 2020, the Court (Bowler, M.J.) granted said motion and entered the Protective Order (Criminal Case, Document No. 44) prompting the filing of documents under seal during the Criminal Case. (See e.g., Criminal Case, Document No. 72).

On November 6, 2023, the Government, through AUSA Seth Kosto, transmitted an email to counsel for the plaintiffs in the above-captioned matter, the undersigned counsel, and counsel for defendant Jim Baugh. AUSA Kosto's email concerned the Government's position on the Motions for Relief. The Government did not take a position on plaintiffs' motion concerning materials eBay, Inc. produced to defendants Baugh and Harville in the Criminal Case in response to the Fed. R. Crim. P. 17 subpoenas. As to the Motions for Relief concerning eBay, Inc.'s production to the Government—and then the Government's production of material to defendants Baugh and Harville under Fed. R. Crim. P. 16—the Government informed counsel that: “[a]s to eBay-produced materials only (i.e., those materials bearing an eBay Bates stamp), so long as the materials are subject to the protective order entered in the civil case, we do not oppose the relief the [plaintiffs] seek. However, materials obtained through the grand jury, FBI 302s, and evidence obtained from sources other than eBay should remain subject to the protective order in the criminal case and should not be produced in discovery in the civil matter.”

Harville would need to review a substantive discovery request propounded by the plaintiffs in accordance with Fed. R. Civ. P. 34 to determine whether responding would comport with the abovementioned caveats raised by the Government as to both the Protective Order in the Criminal Case and in this civil action. In addition, the Motions for Relief risk circumventing the threshold proportionality analysis applied to pretrial discovery. *See* Fed. R. Civ. P. 26(b) (“Discovery Scope and Limits”). The potential for different interests and positions concerning discovery risks further motion practice if the Motions for Relief are allowed at this time. The Motions for Relief are respectfully premature, and it is in the interests of judicial economy for the Court to deny them.

Moreover, on April 27, 2022, eBay, Inc. filed *Joint Motion For Relief From Rule 17(c) Subpoenas By Intervenor eBay, Inc. and Morgan, Lewis & Bockius LLP* (Criminal Case,

Document No. 203). On May 12, 2022, the Court (Saris, J.) in the Criminal Case allowed the motion "...without prejudice to any request for rule 17(c) subpoenas for the sentencing hearings." (Criminal Case, Document No. 208). eBay, Inc. and Morgan, Lewis, Bockius LLP were relieved from the Fed. R. Crim. P. 17 subpoena upon the defendants respectively entering changes of plea, which further complicates the issue as to whether Harville is even in a position to produce the documents concerning the subpoenas in the Criminal Case.

For the reasons set forth above, defendant Harville respectfully requests that this Honorable Court deny the Motions for Relief.

Respectfully submitted,

DEFENDANT DAVID HARVILLE

By his attorneys,

/s/ Daniel K. Gelb

Daniel K. Gelb, Esquire

BBO# 659703

GELB & GELB LLP

900 Cummings Center, Suite 207-V

Beverly, MA 01915

Telephone (617) 345-0010

Fax (617) 345-0009

dgelb@gelbgelb.com

Dated: November 20, 2023

CERTIFICATE OF SERVICE

The undersigned counsel certifies that on November 20, 2023 this document was electronically filed with the Clerk of Court for the United States District Court for the District of Massachusetts using the CM/ECF system, which will send a notice of electronic filing (NEF) for service on all registered participants in the above-captioned action. A copy of this document was transmitted by email to *pro se* defendant Stephanie Stockwell.

/s/ Daniel K. Gelb

Daniel K. Gelb, Esquire